

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

CIVIL ACTION NO.: 1:17-CV-00854-TDS-LPA

REBECCA KOVALICH and
SUZANNE NAGELSKI,

Plaintiffs,

vs.

PREFERRED PAIN MANAGEMENT
& SPINE CARE, P.A., *et al.*,

Defendants.

)
)
)
)
) **DEFENDANTS' MOTION TO SEAL**
) **DOCUMENTS TO RESPONSE**
) **BRIEFS**
)

NOW COME Defendants, Preferred Pain Management & Spine Care, P.A. ("PPM"), Dr. David Spivey ("Dr. Spivey") and Sherry Spivey ("S. Spivey") (collectively referred to as "Defendants"), by and through their undersigned counsel, and pursuant to Local Civil Rule 5.4 moves this Court for an order to seal documents filed by Plaintiffs Rebecca Kovalich and Suzanne Nagelski in Support of their Responses in Opposition to Defendants' Motions for Summary Judgment [DE #s 47-52] containing personnel information about employees and/or former employees of PPM who are not parties to this action. Specifically, Defendants request the Court seal the following documents which contain personnel information about employees and/or former employees of PPM who are **not parties** to this action; confidential, proprietary business and financial information; and private, domestic information:¹

¹ Plaintiffs filed all exhibits in support of their Responses to Defendants' Motions for Summary Judgment under seal in their entirety. [DE #s 53-54]. Plaintiffs separately filed a Motion to Seal and stated

Exhibit Number	Portions to Seal
1	<p><u>Kovalich deposition excerpts:</u></p> <p>74:2-25 (confidential, personnel information); 123:1-25; 124:1-25; 125:1-25; 126:1-25 (confidential business, proprietary and financial information Defendants previously moved to seal [DE #s 44-45, 55, 55-1]); 128:2, 3, 5, 11, 21 (confidential business, proprietary information) 129:5-9 (confidential business, proprietary information); 133:9-12, 19, 23-24 (confidential business, proprietary information); 134:6-7, 10, 14, 17, 20-23 (confidential business, proprietary information); 135:7-9, 12, 14-15, 17, 20-21, 23 (confidential business, proprietary information); 136:2, 13, 15, 22, 24-25 (confidential business, proprietary information); 137:3-4, 10, 16-17, 20 (confidential business, proprietary information); 138:25 (confidential business, proprietary information); 139:2-4, 8, 13-14, 16, 21 (confidential business, proprietary information); 205:10, 15, 23 (private, domestic information).</p>
2	<p><u>Nagelski deposition excerpts:</u></p> <p>94:19-20, 25 (private, domestic information); 97: 4-5, 11-25 (private, domestic information); 98:1-25 (private, domestic information); 99:1-21 (private, domestic information); 187:1-25 (confidential, personnel information Defendants previously moved to seal [DE #s 44-45, 55]); 188:1-25 (confidential, personnel information Defendants previously moved to seal [DE #s 44-45, 55]).</p>
3	<p><u>Dr. David Spivey deposition excerpts:</u></p> <p>51:1, 3-8 (confidential business, proprietary and financial information Defendants previously moved to seal [DE #s 44-45, 55, 55-1]); 70:1-25 (confidential, personnel information Defendants previously moved to seal</p>

Defendants' position as to which exhibits should be sealed. [DE #s 56-58]. However, Plaintiffs did not file any unsealed versions of the exhibits with the Court as required by Local Rule 5.4. Due to this oversight, Defendants cannot link to the record the unsealed versions of the exhibits. Defendants can make these available to the court if requested.

Exhibit Number	Portions to Seal
	[DE #s 44-45, 55)]; 72:12-14, 24-25 (confidential, personnel information); 90:10-21 (confidential, personnel information Defendants previously moved to seal); 124:9-20 (confidential, personnel information Defendants previously moved to seal); 182:4-8, 12 (confidential, personnel information Defendants previously moved to seal); 245:8-11 (confidential, personnel information Defendants previously moved to seal);
4	<u>Sherry Spivey deposition excerpts:</u> 206:5-6 (confidential, personnel information);
5	<u>Yontz deposition excerpts:</u> 62:8 (confidential, personnel information);
6	<u>30(b)(6) deposition excerpts:</u> 13:3-7, 17-25 (confidential, personnel information); 14:1-25 (confidential, personnel information); 16:2-3, 10-25 (confidential, personnel information); 17:5, 14, 20-21 (confidential, personnel information); 18:7-8, 15-16, 24 (confidential, personnel information); 20:15, 20-25 (confidential, personnel information); 21:1-2, 8-9, 19, 24 (confidential, personnel information); 22:1, 4, 14, 10-24 (confidential, personnel information); 37:7-8, 19-23 (confidential, personnel information); 38:1-25 (confidential, personnel information); 41:5-7, 14-17, 21-25 (confidential, personnel information); 42:1-25 (confidential, personnel information); 44:8-25 (confidential, personnel information); 45:1-5, 12-21 (confidential, personnel information).
7	<u>Benton deposition excerpts:</u> 95:21-22, 24 (confidential, personnel information); 101:4, 20, 22 (confidential, personnel information)
8	<u>Swicegood deposition excerpts:</u> None
9	<u>Hawks deposition excerpts:</u> None

Exhibit Number	Portions to Seal
10	Link declaration excerpts referencing employee names in ¶¶ 5, 6, 12, 13, and 14
11	Ingold declaration excerpts referencing employee names in ¶¶ 11 and 12
12	Nagelski declaration excerpts referencing employee names in ¶¶ 9 and 10
13	None
14	Entire exhibit (confidential, personnel information) – Plaintiffs also moved to seal
15	Entire exhibit (confidential, personnel information) – Plaintiffs also moved to seal
16	Entire exhibit (confidential, personnel information) – Plaintiffs also moved to seal
17	Entire exhibit (confidential, personnel information) – Plaintiffs also moved to seal
18	Entire exhibit (confidential, personnel information) – Plaintiffs also moved to seal
19	Entire exhibit (confidential, personnel information) – Plaintiffs also moved to seal
20	Entire exhibit (confidential, personnel information) – Plaintiffs also moved to seal
21	Entire exhibit (confidential, personnel information) – Plaintiffs also moved to seal
22	EEOC Charge portions: Charging Party’s name, date of birth, home phone number, and address
23	EEOC Charge portions: Charging Party’s name, date of birth, home phone number, and address
24	Entire exhibit (confidential, personnel information Defendants previously moved to seal [DE # 43-1, p. 25])
25	Entire exhibit (confidential, personnel information Defendants previously moved to seal [DE # 43-4, pp. 2-3])
26	Email portions referencing names of terminated employees
27	Entire exhibit (confidential, personnel information Defendants previously moved to seal [DE # 43-2, p. 37])
28	Text message portions referencing an employee’s confidential information
29	EEOC Charge portions: Charging Party’s name, date of birth, home phone number, and address
30	EEOC Charge portions: Charging Party’s name, date of birth, home phone number, and address
31	EEOC Charge portions: Charging Party’s name, date of birth, home phone number, and address
32	EEOC Charge portions: Charging Party’s name, date of birth, home phone number, address, name of non-party alleged harasser
33	None
34	Email portions referencing name of terminated employee

Exhibit Number	Portions to Seal
35	None
36	Entire exhibit (confidential, personnel information) – Plaintiffs also moved to seal
37	None
38	None
39	None
40	Entire exhibit (confidential, personnel information)
41	Entire exhibit (confidential, personnel information Defendants previously moved to seal [DE # 43-3, pp. 12-14]) – Plaintiffs also moved to seal
42	PPM discovery responses portions: witness names and contact information, except for Defendants’ counsel, on pages 4-7; names and contact information of non-party individuals on pages 8-11; name and contact information of non-party individual on pages 9-10; and employee’s rate of pay on page 14
43	Email portions referencing employees and their performance and questions for company attorney (Defendants previously moved to seal [DE # 43-9, 7])
44	Entire exhibit (confidential, personnel information Defendants previously moved to seal [DE # 43-9, pp. 8-9])
45	Email portions referencing employee performance
46	Email portions referencing confidential employee medical information
47	Email portions referencing confidential employee medical information and performance
48	Plaintiffs’ Exhibit 48 is the same as Plaintiffs’ Exhibit 45, and thus the proposed redactions are the same
49	None
50	None

In support of their Motion, Defendants submit *Defendant’s Memorandum of Law in Support of Motion to Seal Documents to Response Briefs*, filed contemporaneously herewith.

WHEREFORE, Defendants respectfully request that the Court grant their Motion and order that that the aforementioned documents be filed under seal.

Respectfully submitted this the 20th day of November, 2018.

JACKSON LEWIS P.C.

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CERTIFICATE OF SERVICE

The undersigned certifies that on November 20, 2018, the foregoing *Defendants'* *Motion to Seal Documents to Response Briefs* was filed with the Clerk of the Court, using the Court's CM/ECF system, which will send notification of such filing as follows:

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